

## **CLAIM AMENDMENTS**

### **IN THE CLAIMS**

This listing of the claims will replace all prior versions and listings of claims in the application or previous response to office action:

1. (Original) An isolated nucleic acid comprising a promoter having a sequence of SEQ ID NO: 1, wherein the promoter has stem-regulated promoter activity.

2. **(Currently Amended)** An isolated nucleic acid comprising a promoter having a sequence at least ~~65~~ 60% homologous with SEQ ID NO: 1, wherein the promoter has stem-regulated promoter activity.

3. (Currently Amended) An isolated nucleic acid comprising ~~an OMT a~~ promoter having a sequence at least 60% homologous with SEQ ID NO: 1 and an exogenous nucleic acid, wherein the ~~OMT~~ promoter is operable to drive stem-regulated expression or transcription of the exogenous nucleic acid.

4. (Currently Amended) The nucleic acid of Claim 3, wherein the ~~OMT~~ promoter is further operable to drive upregulated stem-regulated expression or transcription in the presence of a defense-inducing agent.

5. (Currently Amended) An expression vector comprising, ~~in a~~ in a 5' to 3' direction:

~~an OMT a~~ promoter having a sequence at least 60% homologous with SEQ ID NO: 1;

an exogenous nucleic acid; and

a 3' termination sequence.

6. (Original) The expression vector of Claim 5, wherein the exogenous nucleic acid comprises a transgene.

7. (Currently Amended) A monocot plant cell comprising an expression vector having:

~~an OMT~~ a promoter having a sequence at least 60% homologous with SEQ ID NO: 1 and operable in the monocot plant cell;

an exogenous nucleic acid; and

a 3' termination sequence.

8. (Original) The plant cell of Claim 7, wherein the exogenous nucleic acid comprises a transgene.

9. (Original) The plant cell of Claim 7, wherein the exogenous nucleic acid alters carbon metabolism in the plant cell when expressed or transcribed.

10. (Original) The plant cell of Claim 7, wherein the exogenous nucleic acid encodes an insecticide effective against at least one stem-boring insect.

11. (Currently Amended) A monocot plant comprising an expression vector having:

~~an OMT~~ a promoter having a sequence at least 60% homologous with SEQ ID NO: 1 and operable in the monocot plant;

an exogenous nucleic acid; and

a 3' termination sequence,

wherein expression of the exogenous nucleic acid is stem-regulated .

12. (Original) The plant of Claim 11, wherein expression of the exogenous nucleic acid is upregulated by the presence of a defense-inducing agent.

13. (Currently Amended) The plant of Claim 11, wherein the exogenous nucleic acid alters carbon metabolism in ~~the~~ at least one plant cell of the plant when expressed or transcribed.

14. (Original) The plant of Claim 11, wherein the exogenous nucleic acid encodes an insecticide effective against at least one stem-boring insect.

15. (Cancelled.)

16. (Currently Amended) The plant of Claim 11, wherein the plant is selected from the group consisting of: sugarcane, sorghum, rice, maize and any hybrids thereof.

17. **(Currently Amended)** A bacterial cell comprising an expression vector having:

~~an OMT~~ **a promoter having a sequence at least 60% homologous with SEQ ID NO: 1**;

an exogenous nucleic acid; and

a 3' termination sequence.

18. (Currently Amended) A method of directing stem-regulated expression of a nucleic acid in a monocot plant comprising:

providing an expression nucleic acid having ~~an OMT~~ a promoter having a sequence at least 60% homologous with SEQ ID NO: 1, an exogenous nucleic acid and a 3' termination sequence; and

transforming ~~a~~ the monocot plant with the expression nucleic acid;

wherein expression of the exogenous nucleic acid is stem-regulated.

19. (Currently Amended) The method of Claim 18, further comprising providing ~~the expression nucleic acid in~~ an expression vector comprising the promoter having a sequence at least 60% homologous with SEQ. ID. NO:1, an exogenous nucleic acid and a 3' termination sequence.

20. (Original) The method of Claim 18, wherein transforming further comprises gene gun/biolistic-mediated transformation.

21. (Original) The method of Claim 18, wherein transforming further comprises *Agrobacterium*-mediated transformation.

22. (Original) The method of Claim 18, further comprising transforming an embryonic callus.

23. (Original) The method of Claim 22, further comprising regenerating a plant from the embryonic callus.

24. (Original) The method of Claim 18, further comprising transforming a plant cell.

25. (Original) The method of Claim 18, further comprising breeding progeny of the transformed plant.

26. (Currently Amended) A method of directing stem-regulated expression of a nucleic acid in a monocot plant comprising:

providing an expression nucleic acid having ~~an OMT~~ a promoter having a sequence at least 60% homologous with SEQ ID NO: 1, an exogenous nucleic acid and a 3' termination sequence; and

transforming ~~a~~ the monocot plant with the expression nucleic acid;

wherein expression of the exogenous nucleic acid is induced by a defense-inducing agent.

27. (Currently Amended) The method of Claim 26, further comprising providing ~~the expression nucleic acid in~~ an expression vector comprising the promoter having a sequence at least 60% homologous with SEQ. ID. NO:1, an exogenous nucleic acid and a 3' termination sequence.

28. (Original) The method of Claim 26, wherein transforming further comprises gene gun/biolistic-mediated transformation.

29. (Original) The method of Claim 26, wherein transforming further comprises *Agrobacterium*-mediated transformation.

30. (Original) The method of Claim 26, further comprising transforming an embryonic callus.

31. (Original) The method of Claim 30, further comprising regenerating a plant from the embryonic callus.

32. (Original) The method of Claim 26, further comprising transforming a plant cell.



33. (Original) The method of Claim 26, further comprising breeding progeny of the transformed plant.

34. (New) The plant cell of Claim 7, wherein the plant cell is from a plant selected from the group consisting of: sugarcane, sorghum, rice, maize and any hybrids thereof.